



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 20, 2004

Mr. Larry L. Foerster
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Suite 100
Conroe, Texas 77301-2880

OR2004-0409

Dear Mr. Foerster:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194764.

The CIA Hidden Forest Inc., (the "association"), which you represent, received a request for copies of "all financial records" of the association, to include audits of the association's books and copies of minutes of board meetings from 1997 through 2003. You claim that the association is not subject to the Public Information Act ("the Act"). Alternatively, you claim that some of the requested information is confidential. We have considered your arguments and have reviewed the submitted information.

Chapter 552 is only applicable to public information. *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Section 552.0036 of the Act states:

A property owners' association is subject to [the Act] in the same manner as a governmental body if:

- (1) membership in the property owners' association is mandatory for owners or for a defined class of owners of private real property in a

defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;

(2) the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and

(3) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution.

You inform us that the association is a non-profit association of property owners in Hidden Forest Estates, Montgomery County, Texas. A private property owners' association is subject to the Act only if it meets all three of the above-enumerated requirements. You inform us that the association "does not and never has assessed property owners a special or regular assessment based on the value of each owner's property within the subdivision." You further state that, "[the association] collected a \$36 per year maintenance fee assessment since 1979, under the terms of an agreement between the developer of the association and [the association]. In addition, the membership has assessed a membership fee against all the lots in the subdivision. These fees collectively have never exceeded \$100 a year, and they have never been based on the values of each individual lot in the subdivision." Based on these assertions, we find that, because the association does not meet all three of the above criteria as set forth in section 552.0036, the association is not subject to the Act and need not respond to the requestor's request for information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 194764

Enc. Submitted documents

c: Mr. Kenneth Harold Thomas
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(w/o enclosures)